



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-5065
615-741-6007

PHIL BREDESEN
GOVERNOR

PAULA A. FLOWERS
COMMISSIONER

BULLETIN

TO: All Medicare Prescription Drug Plan Sponsors Authorized to Conduct Business in this State and All Licensed Insurance Producers

FROM: Paula A. Flowers, Commissioner *Paula A. Flowers*
Department of Commerce and Insurance

RE: Allegations of Insurance Producer Misconduct in Connection with the Enrollment of Applicants in Part D of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003

DATE: January 31, 2006

The purpose of this Bulletin is to communicate the Department's position regarding allegations of insurance producer misconduct in connection with the enrollment of applicants in Part D of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (hereinafter "MMA"). The Department has become aware of numerous complaints from applicants involving the misrepresentation of terms and/or benefits associated with prescription drug plans, the failure to adequately and completely explain the benefits under such plans, and the cross-selling or forced bundling of other insurance products.

Please be advised that it is the Department's position that the MMA does not preempt the licensing and enforcement provisions of the Tennessee Insurance Producer Licensing Act of 2002, Tenn. Code Ann. §§ 56-6-101, *et seq.* (hereinafter "Insurance Producer Act"), as they relate to the marketing of Part D benefits in this state. The Department's position on this issue was recently confirmed by the Centers for Medicare & Medicaid Services (hereinafter "CMS"). According to CMS, marketing activities associated with the enrollment of applicants in Part D of the MMA may only be conducted by state-licensed insurance producers. Consequently, the licensing and enforcement provisions of the Insurance Producer Act apply to any and all marketing activities associated with the enrollment of applicants in Part D of the MMA.

CMS has received numerous complaints alleging misconduct on behalf of insurance producers in connection with the marketing of Part D of the MMA. CMS will refer any and all complaints it receives involving Tennessee licensed insurance producers to the Department. Please be advised that the Department will closely monitor and investigate any complaints it receives against insurance producers involving any alleged violations of the Insurance Producer Act. Both insurers and insurance producers alike should expect any violations to be treated quickly and severely.

Additionally, please be advised that the Department strongly discourages the practice of cross-selling other insurance products to prescription drug plan applicants. The prescription drug plan benefits associated with Part D of the MMA are complex and often confusing for an applicant. It is the Department's position that it is inappropriate for an insurance producer to take advantage of a Part D lead to cross-sell other insurance products to an applicant for which the applicant may or may not be suited.

Finally, please be advised that the Department expects Prescription Drug Plan Sponsors (hereinafter "PDPS") to develop, implement, and maintain a compliance plan to prevent, detect, and correct insurance producer misconduct as required by 42 CFR § 423.504(b)(4)(vi). Furthermore, the Department expects PDPS to voluntarily report allegations of insurance producer misconduct to the appropriate regulatory authorities, to fully cooperate with any ensuing investigations and/or enforcement actions, and to take appropriate internal corrective actions specific to the circumstances.

Should you have any questions concerning the position set forth in this Bulletin, or its application, please contact the Insurance Division, Fourth Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee, 37243, and/or telephone number (615) 741-2176.

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